

**From:** Chemerys, Ruth [Chemerys.Ruth@epa.gov]  
**Sent:** 8/11/2020 7:12:38 PM  
**To:** Beck, Whitney [beck.whitney@epa.gov]; Hurl, Kathy [Hurl.Kathy@epa.gov]  
**Subject:** RE: 404g Highlights

Thanks Whitney. I would delete retained water and wetlands from the second bullet under the rulemaking, as it's now gone to OW for review.

I'm not sure about mitigation. Maybe move that to the second bullet. But Kathy can weigh in.

Ruth

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**From:** Beck, Whitney <beck.whitney@epa.gov>  
**Sent:** Tuesday, August 11, 2020 2:44 PM  
**To:** Hurl, Kathy <Hurl.Kathy@epa.gov>; Chemerys, Ruth <Chemerys.Ruth@epa.gov>  
**Subject:** 404g Highlights

Hi Kathy and Ruth,

See 404g highlights updated from last week for FL- feel free to add rule updates and I also wanted to check if there are Michigan updates.

I'm assuming Kathy will send to Mike unless you'd like me to.

Thanks!  
Whitney

404(g) updates:

- Working toward 404(g) rule draft – target is end of September to OMB
  - Outstanding issues awaiting leadership input: ESA, NHPA, ~~mitigation~~
  - Outstanding issues team still working through: details on partial assumption, ~~retained waters and wetlands~~, dispute resolution, **mitigation**
  - EA and ICR cannot be completed until decisions made on ESA, NHPA and mitigation – potentially significant burden implications will need to be added
- FL assumption - continuing to coordinate with Florida; anticipate package this week.
  - Biological Evaluation – EPA editing
  - MOAs – EPA-FDEP MOA signed; Corps-FDEP MOA signed
  - NHPA – State operating agreement signed; **Ex. 5 Deliberative Process (DP)**
- **Ex. 5 Deliberative Process (DP)**
  - Process documents – preparing all documents including: FRN including program approval and NHPA consultation; letters including consultation notifications to other agencies, tribes and interested parties
- ESA FRN – Dave/David reviewing memo changing agency position. Other actions include potentially crafting Memo to File responding to significant comments received.

State Assumption Efforts

- Minnesota – HQ continuing to coordinate with MN and R5.
  - Considerations – how to construct general permits/ involve local government units; how to demonstrate consistency with 404(b)(1) guidelines

- Progress – MN expecting to present ideas to EPA in August; in the early stages of pursuing regulatory changes (starting to form stakeholder groups soon)
- Oregon – State has sent initial legal cross walk to EPA for review. There are gaps and inconsistencies we are working with them on.
- Michigan – state will transmit annual report this month.
  - Report will include description of changes to state program processes and permit review.
  - State not requesting EPA approval of program changes.
  - These do need approval; these changes would trigger ESA consultation on MI's program - post change in EPA position.

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